

SALARIES OF PROSECUTING ATTORNEYS,
COUNTY CLERK, COUNTY SUPERINTENDENT
OF SCHOOLS, DEPUTY COUNTY CLERK,
DEPUTY CIRCUIT CLERK AND RECORDER
IN FOURTH CLASS COUNTIES WITH POPU-
LATION OF BETWEEN 15,000 AND 17,500.

Prosecuting attorneys in fourth
class counties do not receive any
salary increase by virtue of any
legislation enacted by the 69th
General Assembly; that on and after
Aug. 29, 1957, county clerks in
fourth class counties are entitled
to increased compensation in the

sum of \$500 per year; that on and after Aug. 29, 1957, the county super-
intendent of schools in fourth class counties is entitled to an increase
in compensation of \$400 per year; that deputy county clerks in fourth
class counties are entitled to \$500 per year additional compensation by
virtue of legislation enacted by the 69th General Assembly; that the chief
deputy circuit clerk in counties having a population of 15,000 and less
than 17,500, shall receive the sum of \$2,280 per year compensation; that
the first deputy shall receive the sum of \$2,100 per year; and the second
deputy shall receive the sum of \$1,920 per year compensation.

Honorable Garner L. Moody
Prosecuting Attorney
Wright County
Mansfield, Missouri

November 29, 1957



Dear Mr. Moody:

Your recent request for an official opinion reads:

"I have been asked by the County Court
for an opinion concerning certain
salaries after August 29, 1957. It
seems that the legislature has seen fit
to raise some salaries, but there is
some question as to whether the salaries
were to take effect during the present
tenure of office.

"I should like an opinion from your
office as to the salaries of the follow-
ing offices in fourth class counties with
a population between 15,000 and 16,000
after August 29, 1957: Prosecuting attor-
ney, County Clerk, and the County Super-
intendent of Schools.

"It seems that salaries for deputies in
the county clerk's office and the circuit
clerk's office have been raised by statute,
and I should like an opinion as to how
much raise was given the deputy clerks for
those two offices and when the raise is
effective."

We note first that the 69th General Assembly enacted legis-
lation increasing the salaries of all of the county officers and
deputies enumerated by you. The matter which we have to decide is

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when these officers and deputies will begin to receive this additional compensation. We note further that this matter hinges upon Section 13 of Article VII of the Constitution of Missouri, 1949, which reads:

"The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

We also note that all salaries quoted by us will be for fourth class counties.

Since the 69th General Assembly adjourned on May 31, 1957, and since none of the salary increase bills here under consideration contains an emergency clause, their effective date is August 29, 1957, which is ninety days after the adjournment of the 69th General Assembly.

When the county officers will begin to draw the compensation provided by these bills is another question. We shall consider these officers and deputies in the order of their listing by you.

Prosecuting Attorney.

Senate Bill No. 198 provides that prosecuting attorneys in counties of the fourth class shall receive an additional \$600 per year as compensation for services performed in relation to aid to dependent children, which services are imposed upon them by Section 208.040, V.A.M.S., Cum. Supp. 1955. On August 15, 1957, this department rendered an opinion to William G. Johnson, Prosecuting Attorney of Morgan County, in which we held that prosecuting attorneys in third and fourth class counties are not entitled to receive the additional compensation provided by Senate Bill No. 198 during their present terms of office. A copy of this opinion is enclosed. As you will note, our reasons for this holding are that the duties for which this compensation was provided had already been imposed upon prosecuting attorneys in 1955, and that the compensation was not for additional duties, and that, therefore, for prosecuting attorneys to receive this compensation during their present terms of office would be violative of Section 13 of Article VII of the Constitution of Missouri, quoted above.

County Clerk.

By House Bill No. 165, enacted by the 69th General Assembly, the compensation of county clerks in fourth class counties is

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increased in the amount of \$800 per year. However, according to the provisions of this bill (Subsections 1 and 2 of Section 49.125), additional duties are laid upon the county clerk, and it is for these additional duties that the additional compensation is given. In this situation we believe that there can be no doubt but that Section 13 of Article VII of the Missouri Constitution does not apply, and that the county clerk may receive the additional compensation after the effective date of the bill which provides it, which date will be August 29, 1957.

In the case of *Mooney v. County of St. Louis*, 286 S.W. 2d 763, at l.c. 766, the Missouri Supreme Court stated:

"(4) There can be no doubt but that the legislature may award extra compensation to an incumbent for the performance of certain newly imposed duties without violating the constitutional inhibition under consideration. *State ex rel. McGrath v. Walker*, 97 Mo. 162, 10 S.W. 473; *State ex rel. Harvey v. Sheehan*, 269 Mo. 421, 190 S.W. 864; *Denneny v. Silvey*, 302 Mo. 665, 259 S.W. 422; *Little River Drainage Dist v. Lassater*, 325 Mo. 493, 29 S.W. 2d 716. * * *"

Such being the situation, we believe, as we stated above, that the county clerk will begin to receive this additional compensation after August 29, 1957.

County Superintendent of Schools.

House Bill No. 31 gives county superintendents in fourth class counties (lines 8, Section 5) an increase of \$400 per year. This increase is given as compensation for additional duties imposed by the bill in regard to aid to handicapped children. Because additional duties are imposed for which this compensation is provided, we believe, for the same reasons that are given above in regard to county clerks, that county superintendents will be entitled to this additional compensation on and after August 29, 1957.

Deputy County Clerk.

By House Bill No. 165, enacted by the 69th General Assembly (lines 43 through 45), the salary of the deputy county clerk in fourth class counties is increased \$500 per year. The effective date of this bill was August 29, 1957.

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Section 51.460, RSMo 1949, divides the counties of the fourth class into population groups and provides that the clerk of the county court in each such county shall be entitled to employ deputies and assistants and for such deputies and assistants shall be allowed the sums as in said section provided. This section begins:

"The clerk of the county court in counties of the fourth class shall be entitled to employ deputies and assistants and, for such deputies and assistants, shall receive the following sums: * * *."

It should be noted here that there is no provision for a fixed or definite term in said section for the deputies and assistants. Neither, however, is there any provision in this section which specifically gives the county clerk the power to terminate such an appointment of a deputy or an assistant.

In this connection we note the following (Vol. 67, C.J.S., p. 450, Sec. 149):

"Deputies, whether common law or statutory, are, where their terms are not fixed by statute, supposed to be appointed at the pleasure of the appointing power, and their deputation expires with the office with which it depends."

In the case of Southern Railway Co. v. Hamilton County, 138 S.W. 2d 770, at l.c. 772, the Court of Appeals of Tennessee for the Eastern Section held:

"Where a deputy's term is not fixed by statute, the duration of his term is at the pleasure of the appointing power.
46 C.J. 1062."

It clearly appears from the statute cited above that deputies and assistants appointed by the clerk of the county court in counties of the fourth class do not have a "term of office."

In this regard, we note the general rule as stated 37 L.R.A. (N.S.) 389, to wit:

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"The general rule, however, seems to be that this constitutional prohibition against changing the salary of a public officer during his term of office applies only to officers who have a fixed and definite term, and does not apply to appointive officers who hold only at the pleasure of the appointing power."

Corpus Juris Secundum, Vol. 67 at page 355, states as follows:

"However, where the statute provides a fixed salary for the officer and salary for deputies, all payable out of the public treasury, an increase in the salary of such deputies, or an extra allowance for clerk hire, or a provision for extra deputies, is not within the Constitutional prohibition, since the government has undertaken to pay the officer and the expenses of running the office."

In view of the above, it would seem to be clear that the deputy county clerk does not have a "term of office" within the meaning of the constitutional prohibition discussed more fully below and that, therefore, the deputy county clerk is entitled to the salary increase provided by House Bill No. 165 as of August 29, 1957.

Deputy Circuit Clerk.

By Senate Bill No. 161, enacted by the 69th General Assembly, the following provision is made (subsection 4, Section 483.382, lines 22 through 27):

"(4) In counties having a population of fifteen thousand and less than seventeen thousand five hundred, the chief deputy shall receive the sum of two thousand two hundred eighty dollars; the first deputy shall receive the sum of two thousand one hundred dollars; the second deputy shall receive the sum of one thousand nine hundred twenty dollars."

This bill provides in part (lines 13 through 17) that "the circuit clerk and recorder may, at any time, discharge any deputy or assistant and may regulate the time of his employment and the circuit court, for good cause, may at any time modify or rescind

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its order permitting an appointment to be made." In the case of State ex rel. v. Gordon, 238 Mo. 168, at l.c. 180, et seq., the Missouri Supreme Court stated:

"Recognizing the precision of definition judicially indulged in the exposition of the constitutional provision now up, as already indicated, we now come to a closer view of the case and to the application of the doctrines announced to the facts in judgment. The final question is: Considering the terms of the law of 1905 under which relator was appointed, does he have a 'term of office' in a constitutional sense? Clearly no. The statute provides that the Adjutant-General shall be appointed by the Governor, that he shall be military secretary to the Governor and that he 'shall hold office during the term of the Governor and may be removed by him at his pleasure.' If the statute had said he should hold office 'during the term of the Governor' and had broken off at that point we would have a different case to deal with. In such case his term would have the same boundaries as the Governor's term. By referring to this certainty, the term of the Adjutant-General would be made certain and the maxim, id certum est, would control the situation. But the law does not break off there and neither should we in the exposition of it. It goes on to say in the same breath that the Governor may remove him at 'his pleasure.' The Governor's breath, under the law, made him, and the Governor's breath is left to unmake him. The appointing power has left to it the disappointing power unchecked, free of limit in time, place or circumstance. No man who holds office at the pleasure of another can be said to have a certain fixed term of office. The two ideas are radically antagonistic and in right reason they cannot both apply at the same time to the same thing. The Governor's 'pleasure' has no fixed bounds discernible to the judicial eye."

From the above, it will be seen that these deputies have no "term of office." Therefore, to allow them a salary increase during their tenure of office would not violate Section 13 of

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Article VII of the Constitution of Missouri, quoted in the forepart of this opinion. We believe, therefore, that the additional compensation provided by Senate Bill No. 161 should be paid to the deputy circuit clerk and recorder on and after August 29, 1957.

CONCLUSION

It is the opinion of this department that prosecuting attorneys in fourth class counties do not receive any salary increase by virtue of any legislation enacted by the 69th General Assembly; that on and after August 29, 1957, county clerks in fourth class counties are entitled to increased compensation in the sum of \$500 per year; that on and after August 29, 1957, the county superintendent of schools in fourth class counties is entitled to an increase in compensation of \$400 per year; that deputy county clerks in fourth class counties are entitled to \$500 per year additional compensation by virtue of legislation enacted by the 69th General Assembly; that the chief deputy circuit clerk in counties having a population of 15,000 and less than 17,500, shall receive the sum of \$2,280 per year compensation; that the first deputy shall receive the sum of \$2,100 per year; and the second deputy shall receive the sum of \$1,920 per year compensation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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Enc.